

# SENATE BILL 390

P2  
SB 844/10 – EHE

11r1964  
CF 11r0885

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By: **Senators Shank, Colburn, Edwards, Getty, Glassman, Jacobs, Pipkin, Reilly, Simonaire, Stone, and Young**  
Introduced and read first time: February 3, 2011  
Assigned to: Education, Health, and Environmental Affairs

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## A BILL ENTITLED

1 AN ACT concerning

2 **State Government – E-Verify Program**

3 FOR the purpose of declaring that it is the public policy of the State to restrict and  
4 deter the use of unauthorized alien workers in the performance of public  
5 contracts and grants in the State; specifying criteria for mandatory registration  
6 in a certain federal E-Verify program for certain contractors and grantees;  
7 prohibiting noncompliant persons or entities from performing certain contracts;  
8 imposing certain requirements on certain subcontractors; authorizing the  
9 Commissioner of Labor and Industry to assess certain penalties for a violation  
10 of this Act; providing that the penalties imposed under the authority of this Act  
11 do not apply to certain contractors and grantees under certain circumstances;  
12 defining certain terms; and generally relating to the employment of  
13 unauthorized alien workers and the federal E-Verify program.

14 BY adding to  
15 Article – State Finance and Procurement  
16 Section 20–101 through 20–105 to be under the new title “Title 20. Use of the  
17 Federal E-Verify Program to Prevent the Employment of Unauthorized  
18 Alien Workers”  
19 Annotated Code of Maryland  
20 (2009 Replacement Volume and 2010 Supplement)

21 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
22 MARYLAND, That the Laws of Maryland read as follows:

23 **Article – State Finance and Procurement**

24 **TITLE 20. USE OF THE FEDERAL E-VERIFY PROGRAM TO PREVENT THE**  
25 **EMPLOYMENT OF UNAUTHORIZED ALIEN WORKERS.**

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.  
[Brackets] indicate matter deleted from existing law.



1 **20-101.**

2 (A) IN THIS TITLE THE FOLLOWING WORDS HAVE THE MEANINGS  
3 INDICATED.

4 (B) "AGENCY" MEANS ANY AGENCY, DEPARTMENT, BOARD,  
5 COMMISSION, OR OTHER ENTITY OF THE STATE OR A POLITICAL SUBDIVISION  
6 OF THE STATE THAT CONTRACTS WITH CONTRACTORS OR ISSUES GRANTS OF  
7 PUBLIC MONEY TO ELIGIBLE RECIPIENTS.

8 (C) "COMMISSIONER" MEANS THE COMMISSIONER OF LABOR AND  
9 INDUSTRY.

10 (D) "E-VERIFY PROGRAM" MEANS:

11 (1) THE FEDERAL E-VERIFY PROGRAM THAT PROVIDES  
12 ELECTRONIC VERIFICATION OF WORK AUTHORIZATION THAT IS JOINTLY  
13 OPERATED BY THE UNITED STATES DEPARTMENT OF HOMELAND SECURITY  
14 AND THE SOCIAL SECURITY ADMINISTRATION; OR

15 (2) A SUCCESSOR PROGRAM THAT IS AUTHORIZED BY THE  
16 UNITED STATES DEPARTMENT OF HOMELAND SECURITY TO VERIFY  
17 ELECTRONICALLY THE WORK AUTHORIZATION STATUS OF NEWLY HIRED  
18 EMPLOYEES IN ACCORDANCE WITH FEDERAL IMMIGRATION LAW OR  
19 REGULATION.

20 (E) "UNAUTHORIZED ALIEN" MEANS AN ALIEN WHO DOES NOT HAVE  
21 THE LEGAL RIGHT OR AUTHORIZATION UNDER FEDERAL LAW TO WORK IN THE  
22 UNITED STATES AS DESCRIBED IN 8 U.S.C. § 1324A(H)(3).

23 **20-102.**

24 IT IS THE PUBLIC POLICY OF THE STATE THAT A GOVERNMENT AGENCY  
25 OR GOVERNMENT CONTRACTOR MAY NOT PERFORM OR ALLOW THE  
26 PERFORMANCE OF A PUBLIC CONTRACT IN THIS STATE NOR PROVIDE FOR A  
27 GRANT OF STATE MONEY IF UNAUTHORIZED ALIEN WORKERS ARE TO BE  
28 UTILIZED IN ANY MANNER IN THE PERFORMANCE OF THE CONTRACT OR GRANT.

29 **20-103.**

30 (A) THIS SECTION APPLIES TO:

31 (1) A CONTRACTOR THAT ENTERS INTO A CONTRACT WITH AN  
32 AGENCY OF THE STATE OR ANY POLITICAL SUBDIVISION OF THE STATE;

1           **(2) ANY SUBCONTRACTOR OF A CONTRACTOR DESCRIBED UNDER**  
2 **ITEM (1) OF THIS SUBSECTION; AND**

3           **(3) A PERSON WHO RECEIVES A GRANT OF MONEY FROM THE**  
4 **STATE OR A POLITICAL SUBDIVISION OF THE STATE.**

5           **(B) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS**  
6 **SUBSECTION, A PERSON OR ENTITY SUBJECT TO THIS SECTION SHALL REGISTER**  
7 **AND PARTICIPATE IN THE E-VERIFY PROGRAM.**

8           **(2) THE FOLLOWING CONTRACTS OR GRANTS ARE EXEMPT FROM**  
9 **PARAGRAPH (1) OF THIS SUBSECTION:**

10           **(I) A CONTRACT OR SUBCONTRACT OF LESS THAN**  
11 **\$100,000, INCLUDING A SUBCONTRACT WITH AN INDEPENDENT CONTRACTOR;**

12           **(II) A GRANT OF LESS THAN \$100,000;**

13           **(III) A CONTRACT OR GRANT UNDER WHICH THE WORK IS**  
14 **PERFORMED ENTIRELY BY INDIVIDUALS NOT SUBJECT TO THE EMPLOYMENT**  
15 **VERIFICATION REQUIREMENTS OF 8 U.S.C. § 1324A(B);**

16           **(IV) A CONTRACT FOR THE SUPPLY OF:**

17                   **1. COMMERCIALLY AVAILABLE OFF-THE-SHELF**  
18 **ITEMS; OR**

19                   **2. ITEMS THAT ARE SOLD IN SUBSTANTIAL**  
20 **QUANTITIES IN THE COMMERCIAL MARKETPLACE AND OFFERED TO THE STATE**  
21 **IN THE SAME FORM THAT THEY ARE AVAILABLE IN THE COMMERCIAL**  
22 **MARKETPLACE; AND**

23           **(V) A CONTRACT FOR FOOD AND AGRICULTURAL PRODUCTS**  
24 **SHIPPED AS BULK CARGO, INCLUDING GRAINS, OILS, PRODUCE, AND SIMILAR**  
25 **COMMODITIES.**

26 **20-104.**

27           **(A) BEFORE THE APPROVAL OF ANY PAYMENT BY A CONTRACTING**  
28 **AGENCY TO A PERSON REQUIRED TO REGISTER FOR AND PARTICIPATE IN THE**  
29 **E-VERIFY PROGRAM UNDER THIS TITLE, THAT PERSON SHALL AFFIRM TO THE**  
30 **CONTRACTING AGENCY UNDER PENALTY OF PERJURY THAT EMPLOYMENT**

1 AUTHORIZATION HAS BEEN MADE FOR ALL EMPLOYEES HIRED DURING THE  
2 PERFORMANCE PERIOD OF THE CONTRACT OR GRANT.

3 (B) A PERSON SUBJECT TO THIS TITLE MAY NOT EMPLOY OR CONTINUE  
4 TO EMPLOY AN INDIVIDUAL, OR CONTRACT INDEPENDENTLY WITH AN  
5 INDIVIDUAL, TO PERFORM WORK OR PROVIDE SERVICES UNDER THAT  
6 CONTRACT, IF THAT INDIVIDUAL IS NOT LAWFULLY ELIGIBLE FOR EMPLOYMENT  
7 IN THE UNITED STATES, AS DETERMINED BY VERIFICATION OF THE  
8 INDIVIDUAL'S STATUS THROUGH THE E-VERIFY PROGRAM.

9 (C) AS A CONDITION OF A CONTRACT, A PERSON SUBJECT TO THIS  
10 TITLE SHALL REQUIRE THAT THE PRIME CONTRACTOR INCLUDE IN EVERY  
11 SUBCONTRACT EXECUTED UNDER THE CONTRACT A PROVISION REQUIRING THE  
12 SUBCONTRACTOR, INCLUDING AN INDIVIDUAL INDEPENDENT CONTRACTOR, TO  
13 COMPLY WITH THE REQUIREMENTS IMPOSED BY THIS TITLE ON THE PRIME  
14 CONTRACTOR.

15 **20-105.**

16 (A) IF A CONTRACTOR, SUBCONTRACTOR, OR GRANTEE VIOLATES ANY  
17 PROVISION OF THIS TITLE, THE COMMISSIONER MAY ASSESS A CIVIL PENALTY  
18 OF:

19 (1) UP TO \$1,000 FOR EACH EMPLOYEE THAT IS NOT LAWFULLY  
20 ELIGIBLE FOR EMPLOYMENT; OR

21 (2) IF THE COMMISSIONER DETERMINES THAT THE  
22 CONTRACTOR, SUBCONTRACTOR, OR GRANTEE KNOWINGLY VIOLATED THIS  
23 TITLE OR ACTED WITH RECKLESS DISREGARD FOR THE REQUIREMENTS OF THIS  
24 TITLE:

25 (I) UP TO \$5,000 FOR EACH EMPLOYEE THAT IS NOT  
26 LAWFULLY ELIGIBLE FOR EMPLOYMENT FOR THE FIRST OR SECOND VIOLATION;  
27 OR

28 (II) UP TO \$20,000 FOR EACH EMPLOYEE THAT IS NOT  
29 LAWFULLY ELIGIBLE FOR EMPLOYMENT FOR THE THIRD OR SUBSEQUENT  
30 VIOLATION.

31 (B) A CONTRACTOR OR GRANTEE IS NOT SUBJECT TO CIVIL PENALTIES  
32 UNDER THIS TITLE IF THE CONTRACTOR OR GRANTEE:

33 (1) (I) COMPLIED WITH THE REQUIREMENTS OF § 20-104(C)  
34 OF THIS TITLE; AND

1                   **(II) HAS COOPERATED WITH THE COMMISSIONER OR A**  
2 **CONTRACTING AGENCY THAT IS INVESTIGATING AN ALLEGED VIOLATION OF §**  
3 **20-104(C) OF THIS TITLE BY A SUBCONTRACTOR OR SUBGRANTEE;**

4                   **(2) FOR A FIRST VIOLATION OF THIS TITLE BY THE CONTRACTOR**  
5 **OR GRANTEE, ACTED IN GOOD FAITH; OR**

6                   **(3) COMPLIED WITH THE REQUIREMENTS OF THIS TITLE**  
7 **REGARDLESS OF ANY SUBSEQUENT DETERMINATION OF AN EMPLOYEE'S**  
8 **ELIGIBILITY TO WORK.**

9                   SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
10 October 1, 2011.